

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CABLE & WIRELESS USA, INC.)	
)	File No. ITC-214-20010507-00299
For Authority Under Section 214 of the)	
Communications Act, as Amended, To Provide)	
Facilities-based and Resale Services Between the)	
United States and all International Points, Except)	
China, Jamaica, Maldives, Russia, St. Kitts and)	
Nevis, Seychelles, Vanuatu and Yemen)	

ORDER ON RECONSIDERATION

Adopted: March 28, 2003

Released: March 31, 2003

By the Chief, International Bureau:

1. In this Order on Reconsideration, we dismiss as moot a petition by Marpin Telecoms and Broadcasting Company Limited ("Marpin"), for reconsideration¹ of our January 10, 2002, Public Notice that granted Cable & Wireless USA, Inc. ("C&W USA") authority under Section 214 of the Communications Act of 1934, as amended (Communications Act), to provide facilities-based and resale services to all international points, except China, Jamaica, Maldives, Russia, St. Kitts and Nevis, Seychelles, Vanuatu and Yemen.²

2. On May 7, 2001, C&W USA filed an application for consolidated Section 214 authority to provide international facilities-based and resale services to all countries, except China, Maldives, Russia, Seychelles, Vanuatu and Yemen.³ C&W USA stated that its primary purpose in filing the application was to consolidate and update the multiple, individual authorizations it already held.⁴ On June 1, 2001, the International Bureau issued a Public Notice listing C&W USA's application as accepted for filing and subject to the streamlined processing procedures set forth in Section 63.12 of the rules.⁵ On June 14, 2001, Marpin requested the International Bureau to remove C&W USA's application from

¹ Marpin Telecoms and Broadcasting Company Limited, Petition for Reconsideration ("Reconsideration Petition"), filed February 8, 2002.

² *International Authorizations Granted*, Public Notice, Report No. TEL-000484, DA No. 02-46, released January 10, 2002.

³ Cable & Wireless USA, Inc., Application for Global Blanket Authority, File No. ITC-214-20010507-00299, filed May 7, 2001 ("Application"). Subsequently, by Letter from J. Lowry, Cable & Wireless USA, Inc., to M. Salas, Secretary, Federal Communications Commission, dated May 31, 2001, C&W USA excluded Jamaica and St. Kitts and Nevis as well from its application, indicating that it would continue to serve those points under its existing authorizations.

⁴ See Application at 2.

⁵ 47 C.F.R. § 63.12 (2002). See *International Authorizations Granted*, Public Notice, Report No. TEL-00404, released June 1, 2001.

streamlined processing because it alleged that C&W USA and its parent had failed “to restrain the anti-competitive conduct of their foreign affiliate, Cable & Wireless Dominica Limited.”⁶ The International Bureau removed C&W USA’s application from streamlined processing so that it could review C&W USA’s existing authorizations.⁷

3. Subsequently, on August 9, 2001, Marpin filed a formal complaint, in which it again argued that C&W USA’s failure to restrain the conduct of its Dominica affiliate violated Commission policies and, more particularly, a condition the International Bureau had imposed on one of the international Section 214 authorizations issued to C&W USA’s predecessor, Cable & Wireless, Inc. (“CWI”).⁸ Marpin also argued that C&W USA had accepted a special concession in contravention of Section 63.14 of the Commission’s rules.⁹

4. While Marpin’s complaint was pending, on January 10, 2002, the International Bureau issued its Public Notice granting C&W USA’s May 7 Section 214 Application. On February 8, 2002, Marpin filed its Reconsideration Petition seeking reversal of that authorization, in which it raised the same arguments that it was pursuing in its formal complaint. On February 19, 2002, C&W USA filed an Opposition to Petition for Reconsideration, requesting us to defer consideration of Marpin’s petition until the Commission had resolved Marpin’s formal complaint.¹⁰

5. On April 19, 2002, the Commission released a Memorandum Opinion and Order denying Marpin’s complaint.¹¹ The Commission held that the condition in CWI’s authorization, on which Marpin had relied in its complaint, applies only to CWI’s affiliates in Jamaica and St. Kitts and Nevis.¹² Because the conduct cited by Marpin concerned C&W USA’s affiliate in Dominica, the Commission found that C&W USA had not violated the *1998 Section 214 Order*.¹³ The Commission also found that Marpin had failed to show the existence of a special concession between C&W USA and its Dominica affiliate.¹⁴

⁶ See Letter from E. Fishman, Holland & Knight, LLP, Counsel for Marpin, to R. Arbogast, Chief, Telecommunications Division, Int. Bur., filed June 14, 2001.

⁷ *International Authorizations Granted*, Public Notice, Report No. TEL-00408, DA No. 01-1420, released June 14, 2001.

⁸ *Marpin Telecoms and Broadcasting Limited v. Cable & Wireless, Inc., et al.*, File No. EB-01-MD-015 (filed Aug. 9, 2001) (“Marpin Complaint”) at 6-7 (citing *Cable & Wireless, Inc.*, Order, Authorization and Certificate, 13 FCC Rcd 17,933 (Int. Bur. 1998) (“*1998 Section 214 Order*”)). The Bureau conditioned the authorization issued to CWI on CWI and its affiliates in Jamaica, and St Kitts and Nevis “not engaging in anticompetitive actions that would provide the applicants with an unfair advantage in the U.S. international services market.” *1998 Section 214 Order*, 13 FCC Rcd 17,937-38, ¶ 38.

⁹ Marpin Complaint at 7. 47 C.F.R. § 63.14(a) (2002). Section 63.14 prohibits a U.S. carrier from accepting a “special concession” from any “foreign carrier [that] possesses sufficient market power . . . to affect competition adversely”

¹⁰ *Cable & Wireless USA, Inc.*, Opposition to Petition for Reconsideration, filed February 19, 2002.

¹¹ *Marpin Telecoms and Broadcasting Company Limited v. Cable & Wireless USA, Inc., et al.*, Memorandum Opinion and Order, FCC 02-115, 17 FCC Rcd 7601 (2002).

¹² See *id.* at 7605-06, ¶ 13.

¹³ *Id.* The Commission further found that, even if the conditions in the Section 214 authorization covered conduct by C&W USA outside of Jamaica and St. Kitts and Nevis, Marpin could not establish a violation of these conditions, because Marpin failed to allege that C&W USA had engaged in any affirmative anticompetitive conduct, or that C&W USA had participated in the allegedly anticompetitive conduct of CW Dominica. *Id.* at 7606.

¹⁴ *Id.* at 7607, ¶¶ 15-16.

6. On May 20, 2002, Marpin filed a Petition seeking reconsideration of the Commission's denial of its complaint.¹⁵ On January 9, 2003, the Commission issued an Order on Reconsideration in which it denied Marpin's Reconsideration Petition.¹⁶ Because the Commission's decision rejects the claims that Marpin's Reconsideration Petition raised against C&W USA's authorization at issue in this proceeding, we find that the Reconsideration Petition is now moot. We, therefore, dismiss Marpin's petition.

7. Accordingly, IT IS ORDERED that the above-referenced Petition for Reconsideration of Marpin Telecoms and Broadcasting Company Limited is hereby DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau

¹⁵ Marpin Telecoms and Broadcasting Company Limited, Petition for Reconsideration, File No. EB-01-MD-015, filed May 20, 2002.

¹⁶ *Marpin Telecoms and Broadcasting Company v. Cable & Wireless USA, Inc., et al.*, Order on Reconsideration, FCC 03-1, 18 FCC Rcd 508 (2003).